

October 2008

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-05 of the North Dakota Century Code, relating
2 to the North Dakota dairy promotion commission and assessment; to repeal chapter 4-27 of the
3 North Dakota Century Code, relating to the North Dakota dairy promotion commission and
4 assessment; to provide a penalty; and to provide a continuing appropriation.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Chapter 4.1-05 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-05-01. Definitions.** As used in this chapter:

- 9 1. "Commission" means the North Dakota dairy promotion commission.
- 10 2. "Dairy product" means a product for human consumption which is derived from the
11 processing of milk. The term includes a milk product normally consumed in liquid
12 form as a beverage.
- 13 3. "Dealer" means any person that handles, ships, buys, or sells dairy products, or
14 who acts as a sales or purchasing agent, broker, or factor of dairy products.
- 15 4. "Gross receipts" means the amount paid to a producer for milk or for a product
16 derived from milk and sold by such producer.
- 17 5. "Processor" means a person that takes delivery of milk or cream and then:
 - 18 a. Cans, dries, prepares, or packages the milk or cream; or
 - 19 b. Produces another product from the milk or cream.
- 20 6. "Producer" means a person engaged in the production of milk for commercial use.

NOTE: What is a "factor" of dairy products? (see subsection 3)

SOURCE: Section 4-27-03.

21 **4.1-05-02. North Dakota dairy promotion commission - Membership - Terms.**

- 1 1. The North Dakota dairy promotion commission consists of the following voting
2 members:
- 3 a. Two producers appointed by the governor from a list of nominees submitted
4 by the North Dakota milk producers association;
- 5 b. The chairman of the North Dakota division of the midwest dairy association;
6 and
- 7 c. Two individuals who are members of and elected by the North Dakota division
8 of the midwest dairy association.
- 9 2. a. The term of each producer appointed by the governor is two years and must
10 be staggered so that the term of only one producer expires each year.
- 11 b. The term of each individual who is a member of and elected by the North
12 Dakota division of the midwest dairy association is two years and must be
13 staggered so that the term of only one individual expires each year.
- 14 3. Each term of office begins July first.
- 15 4. Whenever an association is required by subsection 1 to submit nominees to the
16 governor, that association shall submit at least two nominees for each position to
17 be filled.

NOTE: Current law does not limit the number of consecutive terms that a member may serve.

SOURCE: Section 4-27-04.

18 **4.1-05-03. Nonvoting members - Appointment.**

- 19 1. The commission may appoint up to three nonvoting members from the following
20 list:
- 21 a. The chairman of the North Dakota state university animal and range sciences
22 department;
- 23 b. The agriculture commissioner; and
- 24 c. A processor located in North Dakota.
- 25 2. The commission shall adopt policies governing the appointments and qualifications
26 of nonvoting members.

SOURCE: Section 4-27-04.

27 **4.1-05-04. Election of chairman and officers - Meetings.**

- 1 1. Annually, the commission shall elect one member to serve as the chairman.
- 2 2. The chairman shall call all meetings of the commission and must call a special
- 3 meeting of the commission within seven days when petitioned to do so by three
- 4 commission members.
- 5 3. Annually, the commission shall elect other officers, including a vice chairman and a
- 6 secretary-treasurer.

SOURCE: Section 4-27-05.

- 7 **4.1-05-05. Commission members - Compensation.** Each member of the
- 8 commission is entitled to receive compensation, in the amount established by the commission,
- 9 but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by
- 10 law for state officers if the member is attending meetings or performing duties directed by the
- 11 commission. The compensation provided for in this section may not be paid to any member of
- 12 the commission who receives a salary or other compensation as an employee or official of this
- 13 state if the individual is serving on the commission by virtue of the individual's state office or
- 14 state employment.

SOURCE: Section 4-27-05.

- 15 **4.1-05-06. Commission - Powers.** The commission may:
- 16 1. Expend moneys collected pursuant to this chapter for its administration;⁴⁻²⁷⁻⁰⁵⁽⁴⁾
 - 17 2. Employ, bond, and compensate necessary personnel;⁴⁻²⁷⁻⁰⁵⁽⁴⁾
 - 18 3. Accept gifts, grants, and donations of money, property, and services, to carry out
 - 19 this chapter;⁴⁻²⁷⁻⁰⁵⁽⁶⁾
 - 20 4. Contract with any person for any purpose permitted under this chapter;⁴⁻²⁷⁻⁰⁵⁽⁵⁾
 - 21 5. Sue and be sued; and⁴⁻²⁷⁻⁰⁵⁽⁴⁾
 - 22 6. Do all things necessary and proper to enforce and administer this chapter.⁴⁻²⁷⁻⁰⁵⁽⁴⁾

SOURCE: Section 4-27-05.

- 23 **4.1-05-07. Commission - Duties.** The commission shall determine the uses to which
- 24 any moneys raised under this chapter may be expended. The uses may include the funding of
- 25 research, education programs, and market development efforts, as well as participation in
- 26 programs under the auspices of the state, regional, and national dairy promotion groups.

SOURCE: Sections 4-27-01 and 4-17-05.

- 27 **4.1-05-08. Assessment - Collection.**

- 1 1. Each producer must pay an assessment of ten cents per hundredweight [45.36
2 kilograms] on all milk sold by the producer and on any milk used by the producer to
3 manufacture other products.
- 4 2. All assessments imposed by this section:
- 5 a. Must be collected by the first dealer or processor by deducting the amount of
6 the assessment from the producer's gross receipts; or
- 7 b. Are payable by the producer upon sale of the milk products by the producer
8 directly to the consumer.

SOURCE: Section 4-27-06.

9 **4.1-05-09. Submission of assessments - Civil penalty.**

- 10 1. Any person in possession of assessments required by this section shall forward
11 assessments to the commission on or before the final day of the month following
12 the month in which the milk or milk products were marketed.
- 13 2. If a person fails to submit the assessments imposed by this chapter to the
14 commission as required by this section, the commission may assess a one-time
15 penalty equal to one and one-half percent of the amount of the assessment.

16 **4.1-05-10. Record retention.** Any person responsible for the collection and
17 submission of assessments under this chapter shall keep a record of all gross receipts subject
18 to the assessment. These records must be retained for a period of two full fiscal years from the
19 date of the transaction and are subject to inspection by the commission.

SOURCE: Section 4-27-07.

20 **4.1-05-11. Reports.**

- 21 1. Any person required by section 4.1-05-09 to keep a record shall:
- 22 a. Submit to the commission a form indicating:
- 23 (1) The amount of milk that was subject to the assessment during the
24 preceding month; and
- 25 (2) Any other information that the commission requests; and
- 26 b. Retain a copy of the form for a period of two full fiscal years from the date of
27 the submission.

1 2. Any dealer or processor required to submit a form under this section shall make
2 the form available upon request to any producer who sold milk to the dealer or
3 processor.

SOURCE: Section 4-27-08.

4 **4.1-05-12. Refund of assessment - Required certification by attorney general.**

5 1. When the attorney general certifies to the commission that refunds of assessments
6 paid in accordance with this chapter are no longer precluded by the Dairy
7 Research and Promotion Act [7 U.S.C. 4501 et seq.] or by any other applicable
8 law, the commission may provide refunds to producers.

9 2. a. To receive a refund of any assessment paid in accordance with this chapter, a
10 producer shall submit to the commission a written request for refund
11 application within sixty days after the date of the assessment or final
12 settlement.

13 b. The producer must complete the refund application and return the application
14 to the commission, together with a record of the assessment paid, within
15 ninety days after the date of the assessment or final settlement. The
16 commission shall then refund the net amount of the assessment that had
17 been collected.

18 c. If a request for a refund is not submitted to the commission within the
19 prescribed time period, the producer is presumed to have agreed to the
20 assessment.

NOTE: As directed by the interim committee, this section maintains language allowing a refund, but specifies that the refund is contingent upon the Attorney General certifying that changes in federal law have taken place and that refunds are now permitted. The time period within which refunds must be requested parallel those that the interim committee established for the other commodity groups.

SOURCE: Section 4-27-06(3).

21 **4.1-05-13. Expenditure of funds.** The commission shall approve all expenditures
22 made pursuant to this chapter and shall submit an itemized voucher to the office of
23 management and budget for payment.

NOTE: Does the commission submit vouchers to the Office of Management and Budget?

SOURCE: This section does not appear in the current Dairy Promotion Commission chapter. It does, however, appear in other commodity chapters.

1 **4.1-05-14. Continuing appropriation.** The commission shall forward all moneys
2 received under this chapter to the state treasurer for deposit in the North Dakota dairy
3 promotion commission fund. All moneys in the North Dakota dairy promotion commission fund
4 are appropriated on a continuing basis to the commission to be used exclusively to carry out
5 this chapter.

SOURCE: Section 4-27-06.

6 **4.1-05-15. Penalty.** Any person who violates this chapter is guilty of a class B
7 misdemeanor.

8 **SECTION 2. REPEAL.** Chapter 4-27 of the North Dakota Century Code is repealed.

CHAPTER NOTES: The rewrite does not include the following sections:

- NDCC Section 4-27-01, which entitles the chapter of "North Dakota Dairy Promotion Commission Act", is omitted because it is not necessary.
- NDCC Section 4-27-09, which provides that the commission may not pay its expenses from any source other than the North Dakota Dairy Promotion Commission fund and that the expenses incurred by the commission may not exceed the amount available in the fund, is omitted because it is not necessary. (See Section 54-44.1-09 and Article X, Section 12, which provides that all public moneys . . . shall be paid out and disbursed only pursuant to appropriation first made by the legislature. . . .)
- NDCC Section 4-27-11, which authorized the commission to "submit a biennial report to the governor . . . in accordance with Section 54-06-04" is omitted because it is not necessary. Section 54-06-04 does not require the Dairy Promotion Commission to submit a separate report. This section therefore appears to authorize a voluntary act. The section also requires that the State Auditor perform a biennial audit. This requirement is already set forth in Section 54-10-01 (Powers and duties of state auditor) and does not need to be repeated in this chapter.